

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

IN RE: § CASE NO. 16-52439-CAG
§
JOSE A. RODRIGUEZ & YZABEL §
RODRIGUEZ, §
DEBTORS § CHAPTER 7 PROCEEDING

APPLICATION TO APPROVE COMPROMISE AND SETTLEMENT AGREEMENT (WITH
21-DAY LANGUAGE)

This pleading requests relief that may be adverse to your interests.

If no timely response is filed within twenty-one (21) days from the date of service, the relief requested herein may be granted without a hearing being held.

A timely filed response is necessary for a hearing to be held.

NOW COMES RANDOLPH N. OSHEROW, Chapter 7 Trustee ("Trustee") of the bankruptcy estate of **JOSE A. RODRIGUEZ & YZABEL RODRIGUEZ**, and files his Application to Approve Compromise and Settlement Agreement (With 21-Day Language). The Trustee would show the Court the following:

1. On 10/26/16, a voluntary petition was filed initiating this case under Chapter 7 of the Bankruptcy Code; on 10/27/16, Randolph N. Osherow was appointed Trustee of Debtors' estate and continues to act in that capacity.
2. The Debtors own an interest in 1866 King Arthur, Eagle Pass, TX , estimated value \$40,000.00 less Debtors' exemption of approximately \$30,000.00 for the equity of about \$10,000.00.
3. Under the terms of the settlement, the bankruptcy estate will receive funds from the Debtors in the amount of \$2,500.00 total, payable January 1, 2017 at \$400.00, February 1, 2017 at \$400.00, March 1, 2017 at \$400.00, April 1, 2017 at \$400.00,

A copy of the proposed Order attached as Exhibit "A".

May 1, 2017 at \$400.00, and June 1, 2017 at \$500.00. These payments payable by Debtors no later than the first of the month, beginning January 1, 2017.

The Trustee is asking the Court to approve this settlement because it avoids the uncertainty of trying to sell the property with an estimated value of \$40,000.00 and pay the Debtors' exempt portion of \$30,000.00 and have money left over to pay creditors.

TOTAL TO BANKRUPTCY ESTATE	\$ 2,500.00
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4. This settlement will not be effective until this Court approves this Compromise and Settlement Agreement and all funds are paid in full. The Trustee believes the settlement to be fair and equitable under the totality of the circumstances in the case.

5. The settlement is in the best interest of the estate as it avoids the uncertainty of selling a property with very little equity, if any. The Trustee would assert that the requisites for approval of a compromise and settlement as established by *Jackson Brewing Co. v. Herpel*, 624 F.2d 599, 602 (5th Cir. 1980), have been met.

6. The court has discretionary authority to approve the compromise of a controversy pursuant to R. 9019(a), F.R.Bankr.P. *See Protective Comm. of Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414,424 (1968), on remand, *TMT Trailer Ferry, Inc. v. Kirkland*, 471 F.2d 10 (5th Cir. 1972); *Continental Airlines Inc. v. Air Line Pilot's Ass'n Int'l, (In re Continental Airlines, Inc.)*, 907 F.2d 1500,1508 (5th Cir. 1990). A trustee may compromise claims in the administration of the estate with the approval of the court, after notice and hearing. R. 9019(a), F.R.Bankr.P. Whether to approve a compromise is a matter within the sound discretion of the bankruptcy court. *See In re Aweco, Inc.*, 725 F.2d 293 (5th Cir. 1984); *American Employers Ins. Co. v. King Resources Co.*, 556 F.2d 471 (10th Cir. 1977).

7. Courts have considered the following factors in determining the reasonableness of a settlement agreement:

- a. The probability of success in litigation. The Trustee is uncertain if he could sell the King Arthur Property and recover any money for the creditors.
- b. The difficulty in collecting any judgment that may be obtained. Not applicable. There is a question as to whether or not the real property at issue has any equity for creditors.
- c. The complexity of the litigation involved, and the expense, inconvenience and delay necessarily attendant to it. The cost of litigating this matter is Not Applicable.
- d. The interests of creditors and a proper deference to their reasonable views. All creditors will receive notice of the compromise and settlement.

See Protective Committee, 390 U.S. at 424-25; *In re Emerald Oil Co.*, 807 F.2d 1234 (5th Cir. 1987); *Jones v. Cage (In re W.J. Services Inc.)*, 140 B.R. 190, 191 (S.D. Tex. 1991). This standard seeks to balance the risks and benefits associated with pursuing a potential claim against the costs associated with the proposed settlement.

8. The approval of a proposed settlement does not depend on the establishment of a claim by or against Debtors as a matter of legal certainty. *See Florida Trailer and Equipment Co. v. Dial*, 284 F.2d 567 (5th Cir. 1960). The court need only make an “informed, independent judgment” apprising itself “of all facts necessary for an intelligent and objective opinion of the probability of ultimate success should the claim be litigated.” *Protective Committee v. Anderson*, 390 U.S. at 425. It is sufficient that the court determines the claim has substantial basis and is not patently invalid as a matter of law, or that the outcome of the claim’s litigation is in doubt. *See In re Walsh Construction Inc.*, 669 F.2d 1325 (9th Cir. 1982).

9. The Trustee and the parties hereto support the approval of the compromise because all litigation involves some element of risk and the specific disputed transactions involve a range of

probabilities of success.

10. The underlying issues are not complex but the chance of selling this interest and recovering any money for the creditors is uncertain.

11. Considering the uncertainty of any equity in the real property, the proposed settlement is in the best interest of all parties; therefore, the proposed compromise and settlement should be approved as being in the best interest of the estate.

12. A copy of this Application is being mailed to all interested parties in accordance with Local Rule 9014.

WHEREFORE, RANDOLPH N. OSHEROW, TRUSTEE prays the application to compromise and settle the matter as set forth above be approved; the Court enter an order finding that such settlement agreement is in the best interest of the bankruptcy estate and its creditors; authorizing Trustee to execute all documents necessary to consummate the proposed compromise and settlement; and such Order be entered after 21 days unless an objection is timely filed in accordance with Rule 9014.

Respectfully submitted this 12 day of December, 2016.

/s/ Randolph N. Osherow
RANDOLPH N. OSHEROW, Chapter 7 Trustee
Texas State Bar No. 15335500
342 West Woodlawn, Suite 100
San Antonio, Texas 78212
(210) 738-3001 - Telephone
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RODRIGUEZ,
DEBTORS § CHAPTER 7 PROCEEDING

ORDER APPROVING COMPROMISE AND
SETTLEMENT AGREEMENT

On the day this Order was signed, came for consideration the Chapter 7 Trustee's Application to Approve Compromise and Settlement. The Court, having considered the Application, finds that the application should be granted. It is, therefore

ORDERED, ADJUDGED, and DECREED that the Bankruptcy Estate of Jose A. Rodriguez & Yzabel Rodriguez will receive the amount of \$2,500.00 from the Debtors, Jose A. Rodriguez & Yzabel Rodriguez under the terms of a settlement as provided for in the Trustee's Application Compromise and Settlement Agreement.

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Ex 4A

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CERTIFICATE OF MAILING

The undersigned hereby certifies that a true and correct copy of the APPLICATION TO APPROVE COMPROMISE AND SETTLEMENT AGREEMENT, has been served upon the following parties in interest by U.S. first class mail, postage prepaid, this 6 day of December, 2016:

Jose A. Rodriguez &
Yzabel Rodriguez
1138 Trinity St.
Eagle Pass, TX 78852
Debtor(s)

Lewis E. Buttles
Law Office of Lewis Buttles
342 W Woodlawn, Suite 103
San Antonio, TX 78212
Counsel for Debtor(s)

U.S. Trustee
PO Box 1539
San Antonio, TX 78295

SEE ATTACHED MATRIX FOR LIST OF ALL INTERESTED PARTIES NOTICED.

/s/ Randolph N. Osherow
RANDOLPH N. OSHEROW, Chapter 7 Trustee
Texas State Bar No. 15335500
342 West Woodlawn, Suite 100
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(p)INTERNAL REVENUE SERVICE
CENTRALIZED INSOLVENCY OPERATIONS
PO BOX 7346
PHILADELPHIA PA 19101-7346

(p)SECURITY FINANCE CENTRAL BANKRUPTCY
P O BOX 1893
SPARTANBURG SC 29304-1893

Cardmember Services
P.O. Box 6335
St. Louis, MO 63179Fargo, ND 58125-6335

Chase Auto Finance
P.O. Box 901003
Fort Worth, TX 76101-2003

Consolidated Finance
216 Jefferson St.
Eagle, Pass, TX 78852-4820

Del Rio Southern Pacific Credit Union
106 N. Main
Del Rio, TX 78840-4630

Economy Finance
336 N. Ceylon St.
Eagle Pass, TX 78852-4504

Economy Finance Co.
336 Ceylon
Eagle Pass, TX 78852-4504

Elan Financial/Cardmember Service
CB Disputes
P.O. Box 108
St. Louis, MO 63166-0108

Home Depot/CBNA
P.O. Box 6497
Sioux Falls, SD 57117-6497

J & K Loans
231 Jefferson St.
Eagle Pass, TX 78852-4819

Law Office of Lewis Buttles
342 W. Woodlawn, Ste. 103
San Antonio, TX 78212-3314

LFD Home Furnishing
3025 Boca Chica Blvd.
Brownsville, TX 78521-3581

Parra Loan Co.
265 Jefferson St.
Eagle Pass, TX 78852-4819

PRA Receivables Management, LLC
PO Box 41021
Norfolk, VA 23541-1021

Rio Loan
528 E. Main
Eagle Pass, TX 78852-4519

San Antonio Credit Union
60 Lake St., Ste. 200
Saint Albans, VT 05478-2372

Santos Perez
P.O. Box 64
El Indio, TX 78860-0064

Security Finance Corp.
P.O. Box 3146
Spartanburg, SC 29304-3146

Security Service FCU
P.O. Box 691550
San Antonio, TX 78269-1550

Security Service Federal Credit Union
16211 La Cantera Parkway
San Antonio, TX 78256-2419

Southwest Finance Co.
251 Jefferson St., Ste. 6
Eagle Pass, TX 78852-4819

Sun Loan-Eagle Pass
448 E. Main
Eagle Pass, TX 78852-4517

Toledo Finance Co.
241 Jefferson St., Ste. 5
Eagle Pass, TX 78852-4819

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United States Attorney General
Department of Justice
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